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**ATTORNEYS FOR MARC S. KIRSCHNER, AS
TRUSTEE OF THE YELLOWSTONE CLUB
LIQUIDATING TRUST**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re:)	Chapter 11
Yellowstone Mountain Club, LLC, <u>et al.</u> ¹)	Case No. 08-61570-11
Debtors.)	
)	
)	
)	

MOTION FOR 2004 EXAMINATION OF TIMOTHY BLIXSETH

Pursuant to Rule 2004, F.R.B.P., the undersigned respectfully requests the Court to order examination as follows:

1. **Witnesses to be examined:** Timothy Blixseth

2. **Date:** November 20, 2009

3. **Time:** to immediately follow the court-ordered examination of Mr. Blixseth scheduled in ADV 09-00065 and set to begin at 8:00 a.m.

¹ The Debtors are the following entities: Yellowstone Mountain Club, LLC, Yellowstone Development Club, LLC and Big Sky Ridge, LLC, which entities are substantively consolidated, and Yellowstone Club Construction Co., LLC, which is jointly administered with the other Debtors.

4. **Place:** Fisher Court Reporting
503 East Mendenhall
Bozeman MT 59715

5. **Scope of examination:** The finances, operations and management of Big Springs Realty, LLC; commissions earned by Big Springs Realty, LLC; wages, bonuses, and other compensation paid to employees of Big Springs Realty, LLC and real estate sales staff at the Yellowstone Club; the claims of the former employees of Big Springs Realty, LLC that they were joint employees of Yellowstone Development, LLC or Yellowstone Mountain Club, LLC.

6. **Documents to be produced:** financial records of Big Springs Realty, LLC; bank statements of Big Springs Realty, LLC; correspondence, including e-mail, concerning Big Springs Realty, LLC or its sales staff.

7. **Time, Date and Place of Production** (if different from examination): not applicable

8. **Moving Party's Calculation of Mileage pursuant to F.R.B.P. 2004(e):**
Not applicable.

9. **Additional Facts:** The Yellowstone Club Liquidating Trust ("YCLT") is the successor-in-interest to the Debtors and is charged with marshalling the Debtors' remaining assets to be distributed among valid claims.

In the adversary case filed by the trustee in the Big Springs Realty, LLC bankruptcy, Mr. Blixseth has been ordered (case no. ADV 09-00065, dkt. #35) to appear for examination at this same date, time, and location. This Motion is made in connection with the objections filed by YCLT to the claims of the former Big Springs Realty, LLC employees, which objections are set for hearing on December 10, 2009. This 2004 examination would likewise be limited to topics involving Big Springs Realty, LLC. Attending this 2004 examination will not impose an substantial additional burden on Mr. Blixseth.

Additionally, YCLT requests that this Court permit its counsel to attend Mr. Blixseth's court-ordered examination in Case No. ADV 09-00065, which is scheduled to precede this proposed 2004 examination. Case No. ADV 09-00065 involves the same issues as the Big Springs Realty, LLC employees' claim objections. These individuals have filed substantially identical claims in both this case and in the Big Springs Realty, LLC case, seeking commission-based bonuses that were actually paid to Big Springs Realty, LLC at closings, but were not distributed to the Big Springs employees. On this same basis, YCLT has a contingent claim in the Big Springs case. The creditors in the Big Springs are believed to include primarily, if not exclusively, the former sales staff employees. The primary source of potential recovery in the Big Springs case is believed to be the claims against Mr. Blixseth in adversary case no. ADV 09-00065. YCLT, therefore, further requests permission to attend the examination of Timothy Blixseth set in ADV 09-00065 for Friday, November 20, 2009.

10. The undersigned counsel has contacted Mr. Blixseth's counsel, Dan Manson, who objects to this motion.

Dated: November 17, 2009.

/s/ Shane P. Coleman

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NOTICE OF OPPORTUNITY TO RESPOND AND REQUEST A HEARING

If you object to the motion, you must file a written responsive pleading and request a hearing before the Bankruptcy Court within ten (10) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty (20) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

* * * * *

CERTIFICATE OF SERVICE

I, the undersigned, certify under penalty of perjury that on November 17, 2009, or as soon as possible thereafter, copies of the foregoing Motion for Rule 2004 Examination of Timothy Blixseth were served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same and that in addition service by mailing a true and correct copy, first class mail, postage prepaid, was made to the following persons/entities who are not ECF registered users: None.

/s/ Shane P. Coleman

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